

December 28, 1998

Docket Management Facility
USCG-1998-4302
US Department of Transportation
Room PL-401
400 Seventh Street SW
Washington, DC 20590-0001

and

Rear Admiral Robert C. North
Assistant Commandant for Marine Safety and Environmental Protection
US Coast Guard, 2100 2nd Street, SW G-MTH-1
Washington, DC 20593

Dear Admiral North:

The following comments are submitted on behalf of the Vessel Operators Hazardous Materials Association (VOHMA) in response to Docket No. USCG-1998-4302. VOHMA is a United States based international association, with a membership comprised of thirty ocean common carriers, operating under the flags of several nations, with the purpose of serving the domestic and international Trades in matters pertaining to vessel and intermodal transport of hazardous cargoes. The primary goal of VOHMA is to advocate and promote safe, consistent, and cost-beneficial transport of such cargoes based upon discussion and evaluation of issues impacting maritime operations and interconnecting feeder systems, and to develop consensus positions on all issues which may have a significant impact on transportation safety.

Our association is authorized under a United States Federal Maritime Commission agreement and represents the worldwide Trades between the ports of the US, its territories and possessions, and all other countries. VOHMA members currently transport approximately eighty-five percent (85%) of the ocean freight container moves into the US Trades. Unlike other trade associations with diversified membership, VOHMA represents only ocean common carriers engaged in the transport of dangerous goods.

The international registry of our membership provides us with a unique benefit of cultural
"Committed to the promotion of the safe handling and transportation of hazardous materials."

APL Limited ♦ Atlantic Container Line ♦ Australia-New Zealand Direct Line ♦ Canada Maritime Agencies Ltd. ♦ Columbus Line USA Inc. ♦ Crowley American Transport, Inc. ♦ Delmas AAL ♦ Evergreen America Corporation ♦ Farrell Lines, Inc. ♦ Hapag-Lloyd Container Linie GmbH ♦ Hoegh Lines Agencies, Inc. ♦ Hyundai Merchant Marine (America) Inc. ♦ Independent Container Line, Ltd. ♦ Italia Line (Italia Di Navigazione) ♦ Ivaran Lines ♦ "K" Line America, Inc. ♦ Lykes Lines Limited ♦ Maersk Inc. ♦ Mediterranean Shipping Co., ♦ Mitsui O.S.K. Lines (America) Inc. ♦ The National Shipping Co. of Saudi Arabia ♦ NYK Line (North America) Inc. ♦ OOCL (USA) Inc. ♦ P & O Nedlloyd ♦ Sea-Land Service, Inc. ♦ DSR Senator Lines (America) Inc. ♦ Tecmarine Lines, Inc. ♦ Tropical Shipping ♦ Wilhelmsen Lines (USA) Inc. ♦ Zim-American Israeli Shipping Co. Inc.

diversity in topics brought forth for discussion or evaluation. Delegates representing member companies are, for the most part, those individuals with senior level management responsibility for regulatory compliance and risk minimization.

First of all we commend the United States Coast Guard for recognizing as early as January, 13, 1993, that the regulated industry was experiencing great difficulty in meeting the requirements of the current Part 126, 33 CFR, regarding the handling of explosives and other dangerous cargoes within waterfront facilities. We thank you for including in this rulemaking a response to our petition for rulemaking, submitted on July 24, 1995, seeking to amend these regulations to harmonize the facility requirements for stowage and segregation of such cargoes with those of the International Maritime Dangerous Goods Code. As we pointed out in our petition, these regulations have not been updated for several years and the amendments that you now propose are needed to reflect modern transportation methods and improved safety procedures. VOHMA members would further suggest that the rulemaking should consider the future evolution of the seaport infrastructure already in the preliminary design stage where significantly larger containerships will call on mega-port facilities with greater volumes of cargoes passing through these waterfront facilities. Regulatory foresight in this area could eliminate the need for future amendments to the threshold quantities requiring notification to the COTP.

In response to your solicitation for comments regarding the Notice of Proposed Rulemaking published in the Federal Register of October 29, 1998, VOHMA offers the following. We are in full concurrence with the intent of the proposed rulemaking and have only a few general concerns. In the preamble published in the rulemaking, under the heading "Discussion of Proposed Rule" while we recognize that the governing preemption criteria exercised in such proceedings are established by statute, we oppose any state or local standards which would not recognize the criticality of international harmonization to the import/export trade within US commerce.

In the proposed amendment to §126.27(b)(1) we suggest that the quantity of explosives triggering a notification to the COTP would more clearly state the quantity most commonly used in the industry if it were to specify the "net explosive quantity" or "net explosive content" as appropriate.

In the proposed amendment to §126.27(b)(2), the provisions for notification might be less burdensome to industry and the COTP and at the same time provide a greater safety benefit if its application were limited to bulk packagings of Class 2.1, flammable gases. Historically, incidents involving failure of non-bulk packaging of Class 2.1 are rare due to the strict cylinder specifications of the US regulations and even if an incident were to occur, the prior notification to the COTP would probably not trigger any extraordinary emergency response preparedness measures. The voluminous quantity of notifications using the threshold quantity in the existing proposal as applied to non-bulk packaging could render the notification less meaningful.

The International Maritime Dangerous Goods Code at Section 18.6.2 provides exception for segregating packagings containing limited quantities and in relation to other dangerous goods cargoes. Therefore, the segregation requirements do not apply to such shipments when packed within a freight container or to the freight containers so packed. In the proposed amendment to §126.27(d),

the same exception applies to break-bulk dangerous goods in limited quantity packaging. The proposed amendment to §126.27(e) should include the same provision. Also, the reference to §176.83(f) within this proposed section should be clarified to indicate that for horizontal stowage, the “on deck” column of that Table should be used for stowage at a terminal facility.

We would further suggest that since §171.12(b) states “Notwithstanding the provisions of this subchapter, a material which is packaged, marked, classed, labeled, placarded, described, stowed and segregated , and certified in accordance with the IMDG Code, and otherwise conforms to the requirements of this section, may be offered and accepted for transportation and transported within the United States” that the USCG should closely monitor the 49CFR, §176.83 segregation requirements to identify any inconsistencies with the IMDG Code stowage and segregation requirements.

VOHMA suggests additional text be added at §126.30(a) to require that “When the explosives or other hazardous materials are stowed in containers aboard vessels within the indicated distances, welding or hotwork may be allowed subject to notification of the COTP prior to commencement of such work.”

We hope you will find our comments helpful as you continue the rulemaking process to improve safety within port facilities while continuing to enhance international harmonization. VOHMA appreciates the opportunity to comment on the amendments proposed in the NPRM and would be happy to provide further explanation or clarification of our position.

Submitted on behalf of VOHMA by:

John V. Currie, VOHMA Administrator